

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/30/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KAREN VAUGHT,)	1 CA-IC 09-0087
)	
Petitioner,)	DEPARTMENT A
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
THE INDUSTRIAL COMMISSION OF ARIZONA,)	Rule 28, Arizona Rules
)	of Civil Appellate
Respondent,)	Procedure)
)	
PRICE GREGORY SERVICES,)	
)	
Respondent Employer,)	
)	
NEW HAMPSHIRE INSURANCE CO c/o AIG)	
CLAIM SERVICES,)	
)	
Respondent Carrier.)	
)	

Special Action-Industrial Commission

ICA CLAIM NO. 20081-750106

CARRIER CLAIM NO. 710-516657

Administrative Law Judge Deborah A. Nye

DISMISSED

Karen Vaught
Petitioner *in Propria Persona*

Mena, Arkansas

Andrew F. Wade, Chief Counsel
The Industrial Commission of Arizona
Attorney for Respondent

Phoenix

B A R K E R, Judge

¶1 Petitioner employee Karen Vaught ("Vaught") seeks special action review of an Industrial Commission of Arizona ("ICA") award and decision upon review denying her benefits. Although issues are presented on appeal with regard to the merits of the underlying award, we are unable to reach those issues due to a jurisdictional defect. Because Vaught's petition for special action was untimely, we dismiss the appeal.

Facts and Procedural History

¶2 On March 10, 2008, Vaught filed a Request for Hearing before the ICA regarding injuries she sustained in June 2008. On September 2, 2009 the Administrative Law Judge ("ALJ") issued a decision limiting Vaught's medical benefits to those incurred between the June 2008 accident and May 12, 2009. Vaught timely appealed the ALJ's decision.

¶3 On October 20, 2009, the ALJ issued and mailed to the parties her decision upon review affirming the September 2 award. On November 23, 2009, Vaught filed this petition for special action.

Discussion

¶4 This court has jurisdiction to review ICA awards pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(2)

(2003) and 23-951(A) (1995). This court's review of an ICA award is commenced by the filing of a Petition for Special Action-Industrial Commission with the clerk of this court. See Ariz. R.P. Spec. Act. 10. The petition for special action must be filed within thirty days after the ALJ's decision upon review is mailed to the parties. See A.R.S. § 23-943(H). The timely filing of the petition for special action is jurisdictional. *Contreras v. Indus. Comm'n*, 98 Ariz. 221, 223, 403 P.2d 535, 537 (1965); *Smith v. Indus. Comm'n*, 27 Ariz. App. 100, 101, 551 P.2d 90, 91 (1976). Deposit in the mail within the thirty-day period does not satisfy the filing requirement. *Smith*, 27 Ariz. App. at 101-02, 551 P.2d at 91-92. As we discuss below, neither does the five-day mailing period under Rule 6(e) of the Arizona Rules of Civil Procedure apply.

¶15 When Rule 6(e) applies, and a paper is served by mail, five days will be added to the prescribed time period for performing the act in question. In *Thielking v. Kirschner*, this court extended Rule 6(e) to statutes that govern the prescribed periods for filing administrative appeals. 176 Ariz. 154, 158, 859 P.2d 777, 781 (App. 1993). However, the court limited its holding to statutes that mark the beginning of the prescribed period from the "date of service." *Id.* The court specifically stated that 6(e) would not apply to statutes in which the prescribed period for an administrative appeal was marked from the "date of mailing." *Id.* at 183-84, 859 P.2d 781-82. The court specifically cited the

statute governing ICA appeals, at issue here, as an example of a statute to which Rule 6(e) does not apply. *Id.*; see also *Smith v. Ariz. Dep't of Corr.*, 135 Ariz. 160, 162, 659 P.2d 1305, 1307 (App. 1982) (ruling that Rule 6(e) applies to periods counted from date of service, not to those expressly counted from date of mailing).

¶6 In ICA proceedings, the decision upon review becomes final thirty days after the "date of mailing" unless one of the parties files a Petition for Special Action-Industrial Commission within that period. A.R.S. § 943(H) (1983). For that reason, consistent with *Thielking*, Rule 6(e) is inapplicable in ICA cases.

¶7 Here, Vaught had thirty days from the mailing of the ALJ's decision upon review to file her petition for review. The ALJ's decision upon review was mailed to the parties on October 20, 2009. To be timely, the petition for special action had to be filed with this court by November 19, 2009. Vaught's petition for special action was postmarked on Thursday, November 19, 2009 but was not filed until Monday, November 23, 2009. Accordingly, Vaught's petition for special action was untimely, and this court lacks jurisdiction to review the ALJ's decision on appeal.¹

¹ Moreover, even if Vaught had timely filed her petition, the ALJ's award would not have been set aside. It was Vaught's burden during the ICA hearing to present medical evidence establishing a causal connection between the June 2008 accident and her subsequent medical condition. See *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1997). Despite being granted additional time to do so, Vaught failed to present any such evidence.

Conclusion

¶18 For the foregoing reason, we dismiss the petition for special action.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

DONN KESSLER, Presiding Judge

/s/

JON W. THOMPSON, Judge